

5 Official Opinions of the Compliance Board 154 (2007)

OPEN SESSION REQUIREMENT – LIMITATIONS ON CAMERA LOCATIONS IN HOUSE OF DELEGATES HEARING ROOMS, HELD NOT TO BE A VIOLATION

July 25, 2007

Mr. David Collins
WBAL-TV 11

The Open Meetings Compliance Board has considered your complaint that the Open Meetings Act was violated by certain limitations on the locations within House of Delegates hearing rooms from which camera operators may film witnesses. For the reasons explained below, the Compliance Board concludes that these limitations do not violate the Act.

I

Complaint and Response

This matter has been marked by an extensive series of letters. We shall present the complaint, response, and supplementary letters chronologically.

Letter of February 27, 2007, from Mr. Collins. The initial complaint letter alleged that Speaker of the House Michael Busch and the presiding officers of the standing committees of the House of Delegates (hereafter “Committee Chairs”) had violated the Open Meetings Act by prohibiting news organizations from establishing camera positions from which the faces of witnesses could be filmed at a direct angle. The complaint recited several examples early in the 2007 session in which photographers from WBAL-TV were instructed to move to a position from which the camera operator could only film the side of a witness’s face or the back of his or her head.¹ The complaint contended that the Committee Chairs’ policy forbidding “a quiet stationary camera from photographing the witness testifying in a public

¹ The examples cited involved the Ways and Means Committee on January 16, 2007; the Economic Matters Committee on January 23; the Environmental Matters Committee on January 30; the Judiciary Committee on February 13 and 14; and the Appropriations Committee on February 22. On this last date, after the Committee Chair allegedly “instructed his staff that news cameras would be restricted to an area where the camera angle could only view the side of a witness face or the back of their head,” negotiations by the news media “resulted in a temporary reprieve in which cameras were allowed to video tape the faces of witnesses. However, the news media was told that this was a one time only event.”

meeting” violated the reasonableness standard in the Open Meeting Act’s provision on the recording of meetings. The restrictive camera angle, the complaint continued, resulted in images that fell short of the station’s standard for on-air presentation: “Television is a visual medium. Our camera, in most cases, is more important than a reporter’s pencil and notepad. Restricting the TV camera to area[s] where it cannot reasonably record the event is the same as closing the public meeting, or at least part of it, to television news organizations.”

The complaint recited efforts to gain the Committee Chairs’ approval for a camera location that would enable full-face filming of witnesses. The specific suggestion was that the camera operator would set up “behind one of the Delegates’ desks. Of course we would be careful not to block an aisle.... I also suggested that we could set up our news camera in either corner of the room behind the Chairperson’s table. That way our view would be unobstructed and that camera position should eliminate concerns about potential disruption, privacy or blocking an aisle.” According to the complaint, none of the Committee Chairs responded to these requests.

Letter of March 7, 2007, from Mr. Collins. This follow-up letter excluded Delegate Dereck Davis, Chairman of the House Economic Matters Committee, from the complaint. This letter indicated that on March 7, “Chairman Davis was very cooperative in my request to video tape witnesses that came before his committee. I am now confident, based on today’s experience in his committee room, that camera position will no longer be an issue.”

Letter of March 27, 2007, from Assistant Attorney General Sandra Benson Brantley. Pointing to the crush of business near the end of a legislative session and the need for the Office of Counsel to the General Assembly to conduct bill review immediately following the session, Ms. Brantley requested an additional 30 days to respond to the complaint. The Compliance Board granted this request.

Letter of May 10, 2007, from Ms. Brantley. This timely response on behalf of the Committee Chairs indicated that, when the complaint was filed, the rules of all of the committees allowed photography or video recording from behind a rope demarcating the audience area in the hearing room. From this position, a camera operator would be able to film the side and back of a witness. In addition, the Appropriations Committee had expanded the area in which photography or filming would be permitted beyond the audience area up to the space behind the third Delegate’s chair on either side.²

² This accommodation enabled more camera angles, although not a direct shot of the front of a witness’s face, as called for in the complaint.

After the complaint was filed, the response continued, discussions ensued aimed at better accommodating the press's desire to photograph or film witnesses. As a result, three committees – Environmental Matters, Judiciary, and Ways and Means – established designated press areas: in the Environmental Matters Committee, the area in the top corner of the room; in the Judiciary Committee, along the sides of the room up to and including the top corners; and in the Ways and Means Committee, the space directly behind the Chair's desk. The Appropriations Committee, however, intends to maintain its current rule, allowing photographing or filming in the audience area and, with notice to a Committee staff member, along the side walls up to the third chair. According to the response, the Appropriations Committee did not create an additional designated press area because of lack of space.

The response argued that there was no violation in the application of the former rules, because they reasonably restricted the location of the filming at issue. Because the revised rules are more permissive, the response argued, perforce they are also reasonable. Legislators and their staff need to conduct official business, including seeing and hearing witnesses, “without distraction or disruption.” These rules, it is argued, serve this legitimate purpose without significantly impeding the work of the news media: “The witness can be seen, heard and identified from any of the locations where filming is allowed. That one television station makes an editorial decision only to air full face images of subjects does not make the committee rules unreasonable. This is a working government hearing where public business is occurring, not a movie set.”

Letter of May 22, 2007, from Trina R. Hunn, Office of the General Counsel, Hearst Corporation. This letter was focused on the revised rules set out in the Committee Chairs' response. On the one hand, Ms. Hunn's letter characterized the new policy as “a major step forward.” On the other hand, the rules “do not go far enough.” Ms. Hunn's letter noted that the Judiciary Committee would henceforth allow “the press to return to its traditional location along both sides of the room so that it can film from behind the Delegates' desks and provide clear shots of the faces of all participants” This, the letter contended, is the only approach that is reasonable and, consequently, lawful. The plans for the Appropriations, Environmental Matters, and Ways and Means Committees, according to the letter, “impose obvious limitations on photographic access.... The space relegated to the press is very limited and will likely accommodate only a few cameras at a time.” Rotating members of the press in and out of the designated space is likely to be more disruptive than simply allowing camera operators to set up fixed positions along the sides of the room. The letter concluded by requesting the Compliance Board to “require each committee to comply with the plan that facilitates the greatest degree of press access: namely, the plan of the Judiciary Committee. If the Judiciary

Committee can accommodate filming and photography along either side of the room, ... then the other three Committees ... should adopt similar measures as well.”³

Letter of June 13, 2007, from Assistant Attorney General Brantley. Having been invited to supplement the Committee Chairs’ response, Ms. Brantley did so in this letter.⁴ This supplementary response rejected the contentions in Ms. Hunn’s letter. The long-standing practice cited by Ms. Hunn was beside the point, according to the Committee Chairs, because the hearing rooms previously used by the committees were differently configured, with a smaller space for the audience and wider side aisles. The designation of press areas is an accommodation, not a concession that limiting the press to the audience area violated the Act. Each committee was then, and now is, free to establish its own rules, so long as they are consistent with the broad reasonableness test in the Open Meetings Act. Rules need not be uniform to be reasonable.

II

Analysis

The question for the Compliance Board is whether the rules that applied to the WBAL-TV camera operator at the time of the complaint, and that are intended to continue to apply to members of the public who lack press credentials, are lawful.

In its declaration of legislative policy, the Open Meetings Act speaks of the value of enabling citizens to “observe the performance of public officials [and] the deliberations and decisions that making of public policy involves,” “to attend, report on, and broadcast meetings of public bodies,” and “to witness the phases of the deliberation, policy formation, and decision making of public bodies...” §10-501(a) and (b). The basic way in which someone “observes” or “witnesses” is by coming to a meeting, sitting in the audience, listening to what is said, and seeing what can be seen from one’s position in the audience.

³ The Compliance Board, of course, cannot “require” the committees to do anything even if we found a violation. “The opinions of the Board are advisory only,” and the Board “may not require or compel any specific actions by a public body.” §10-502.5(i) of the State Government Article, Annotated Code of Maryland. All statutory references in this opinion are to the State Government Article.

⁴ The Open Meetings Act does not specify procedures when a complainant submits a reply to a public body’s response. Under Compliance Board practice, the public body is invited to supplement its response, should it choose to do so, as the Committee Chairs did in this case.

Very often, given the configuration of the typical hearing room, a witness sits facing the members of the public body, with his or her back to the audience. Members of the audience may well not be able to see a witness's facial expressions. In fact, someone in the back of the audience might not be able to see clearly either the witness's face or the faces of the members of the public body. Yet, it cannot be seriously contended that members of the audience with a poor seat have a right to wander into the well of the meeting room so as to see the witnesses or members more clearly. We think it self-evident that the ability of committee members and staffers to conduct a hearing without distraction or disruption would be impaired if members of the audience were generally free to walk back and forth behind the members' chairs, in a narrow space, in order to get a better view of a witness. A public body "has unquestioned power to prohibit any disturbance at its meetings." *Nevens v. City of Chino*, 233 Cal. App.2d 775, 778 (1965). See § 10-507(c).

A rule that requires members of the audience to stay in the audience area is not a deprivation of the right to observe the policy making process. To have an audience area in the first place, and to require members of the public to stay within it, is basic to the "reasonable rules regarding the conduct of persons attending [a public body's] meetings" that the Open Meetings Act explicitly endorses. §10-507(b). If a member of the public without a camera may be told to stay in the audience area, even at the cost of not being able to fully observe the facial expressions of witnesses, so may a member of the public who brings a camera. Possessing a camera does not free a member of the public from a rule that assigns spectators to a designated seating area.

The Act allows "reasonable rules regarding ... the videotaping, televising, photographing, broadcasting, or recording of [the public body's] meetings." §10-507(b). In 1 *OMCB Opinions* 137, 140 (1995), we said that a rule on the use of recording devices meets the Act's test of reasonableness if the rule "(1) is needed to protect the legitimate rights of others at the meeting; and (2) does so by means that are consistent with the goals of the Act." A *prohibition* on audio or video recording is the exemplar of a rule that meets neither criterion of reasonableness. By contrast, to protect the rights of others at a meeting, rules can "include the number and types of cameras permitted, the positioning of the cameras, the activity and location of the operator, lighting and other items deemed necessary to maintain order and to prevent unnecessary intrusion into the proceedings." *Maurice River Township Bd. of Educ. v. Maurice River Township Teachers Ass'n*, 475 A.2d 59, 62 (N.J. Super. 1984). See also *Tarus v. Borough of Pine Hill*, 916 A.2d 1036, 1048 (N.J. 2007); Anne Taylor Schwing, *Open Meeting Laws* 225 (1984). A rule that requires all members of the audience to stay in the audience area, even if they bring a camera, is one such reasonable rule. Moreover, it is consistent with the goals of the Act, because the denial of one particular camera angle does not undermine citizens' rights to observe or record the proceedings.

The complaint and Ms. Hunn’s supplementary letter contended that, when the Committee Chairs disallow filming along both sides of the hearing room, up to and including the top corners, they “place unjustified restrictions on the press.” The clear implication is that the press, as such, has special rights under the Open Meetings Act. This is incorrect. A public body “must afford members of the public and reporters access to an open meeting on equal terms.... This equality principle applies to videotaping.” 5 *OMCB Opinions* 22, 24 (2006). The rule requiring television camera operators to stay within the audience area is simply equal application of a rule applicable to all who attend the hearing. Although the news media may not be discriminated against in the application of access rules, *see 2 OMCB Opinions* 67 (1999), the Act does not entitle them to special access rights.⁵ If a rule is reasonable for attendees generally – and the audience demarcation rule is – it is reasonable for those attendees who have press credentials.

III

Conclusion

In summary, the Open Meetings Compliance Board finds that the restrictions on the location of camera operators at hearings of committees of the House of Delegates did not violate the Open Meetings Act.

OPEN MEETINGS COMPLIANCE BOARD

Courtney J. McKeldin

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⁵ We do not mean to suggest that the Act *prohibits* the granting of special consideration to members of the press, as discussed in Ms. Brantley’s letters. As long as all members of the public are afforded a reasonable opportunity to observe and make recordings, they have no grounds for complaint under the Act that the Committee Chairs, exercising the powers granted them by other law (the Rules of the House of Delegates), choose to afford augmented access to the news media.